

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

UNITED STATES OF AMERICA

VS.

4:20-CR-00163-JM

CHARLES ELRIC SCHLINKE

ORDER

Pending is Defendant's Motion to Dismiss for Failure to State an Offense (Doc. No. 18).

The Government has responded.¹ For the reasons below, the motion is DENIED.

On June 4, 2020, Defendant was indicted for allegedly violating 18 U.S.C. § 922(g)(1). According to the Indictment, Defendant, who had previously been convicted of simple robbery in Minnesota, was unlawfully in possession of two firearms on May 20, 2020.² Under § 922(g) it is unlawful for someone "who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year" to possess a firearm.³

On October 15, 2015, Defendant was sentence to 10 years probation for simple robbery, in violation of Minnesota law. Accordingly, Defendant was convicted of a crime punishable by imprisonment for a term exceeding one year. Defendant's right to possess firearms was expressly prohibited under the terms of his probation.⁴ Notably, Defendant's probation discharge order specifically provides that the "discharge does not change any possible firearms restrictions that may be placed upon you."⁵

¹Doc. No. 21.

²Doc. No. 2.

³18 U.S.C. § 922(g)(1).

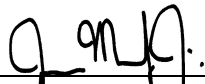
⁴Doc. No. 18-1.

⁵Doc. No. 18-4.

To the extent that Defendant is arguing that his simple robbery conviction was determined to be a misdemeanor and is not a qualifying conviction under § 922(g), that argument has been rejected repeatedly by the Court of Appeals for the Eighth Circuit.⁶

Finally, a simple robbery conviction under Minnesota law is a crime of violence.⁷ In fact, Minnesota Statute Annotated § 609.165 specifically lists simple robbery as a crime of violence, and provides that a person who commits a crime of violence may not possess a firearm. It is possible for a court to restore these rights under the statute, but Defendant provided no evidence that his right to possess a firearm was restored by a Minnesota court.⁸ Accordingly, based on his Defendant's simple robbery conviction, he remains a person unauthorized to possess a firearm.

IT IS SO ORDERED this 22nd day of October, 2020.


UNITED STATES DISTRICT JUDGE

⁶*Hirman v. United States*, 613 F.3d 773, 776 (8th Cir. 2010) (citing cases).

⁷*United States v. Pettis*, 888 F.3d 962, 964 (8th Cir. 2018), cert. denied, 139 S. Ct. 1258, 203 L. Ed. 2d 281 (2019) (holding “that Minnesota simple robbery qualifies as a violent felony.”).

⁸Minn. Stat. Ann. § 609.165, Subd. 1d. “Judicial restoration of ability to possess firearms and ammunition by felon. A person prohibited by state law from shipping, transporting, possessing, or receiving a firearm or ammunition because of a conviction or a delinquency adjudication for committing a crime of violence may petition a court to restore the person's ability to possess, receive, ship, or transport firearms and otherwise deal with firearms and ammunition.”